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IN THE

Supreme Court of the United States

October Term, 1958.

No. 176.

HARRY J. ALKER, JR.,

Petitioner,

v.

GIRARD TRUST CORN EXCHANGE BANK and FLORENCE FISHER DUNWOODY, Executors under the Will of MAMIE DuBAN, Deceased,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

Petitioner's Reply Memorandum.

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HARRY J. ALKER, JR.,
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GIRARD TRUST CORN EXCHANGE BANK AND FLORENCE FISHER DUNWOODY, EXECUTORS UNDER THE WILL OF MAMIE DEBAN, DECEASED,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

PETITIONER'S REPLY MEMORANDUM.

The Brief in Opposition, because of many statements made without propriety in law or fact, compels your petitioner to reply as follows:

The sole issue before this Honorable Court is whether due process of law under the Fourteenth Amendment to the Constitution of the United States, was afforded this petitioner by the Court of Common Pleas of Philadelphia County, Pennsylvania.

Prior continuances are irrelevant to the question of whether the Trial Court abused its discretion in denying

petitioner's motion for a new trial. Whatever the grounds for previous continuances, the defendant has the right to be present at the trial of his case and is not responsible for the misfortune overtaking him. *Mathews v. Willoughby*, 85 Ga. 289, 11 S. E. 620. Petitioner, through his personal physician, offered uncontradicted testimony in open Court indicating physical incapacity to be available for trial. The subsequent trial held without petitioner's presence denied him a hearing appropriate to the case. *Mullane v. Central R. & T. Co.*, 339 U. S. 306, 94 L. Ed. 865 (1950). What took place was little more than an ex parte hearing. *Ellis v. Middleton*, 62 A. 2d 371 (M. C. D. C. 1948).

It must be noted that respondents are attempting to mislead this Honorable Court in the Brief in Opposition:

(a) as to the number of continuances, see (Br. op. p. 4), which is different from those claimed prior hereto (R. 340a);

(b) in that an application was made without notice (Br. op. p. 6) when in fact notice was given and because respondents objected, medical testimony (R. 49a) was introduced in lieu of the usual physician's certificate as required by rules of the Court;

(c) in that depositions were continued twice (Br. op. p. 7), when in fact they were taken on the date fixed (R. 168a);

(d) in that skills were used to produce delays (Br. op. p. 8) when the matter came to trial within two years from its inception, clearly a normal course of events;

(e) in that petitioner carried on normal business activities (Br. op. p. 8) without a scintilla of evidence to support this serious charge in the record, (unfounded opinions of a trial judge are not evidence);

(f) and the shrewd device of changing counsel (Br. op. p. 8) consisted of the withdrawal of Edwin Hall, II, Esquire,—when he moved his office to another county in August, 1954.

It is important to every person that no mock trial, or any trial short of a full and fair trial with the opportunity to be present with counsel, and to hear and confront witnesses, take place in these United States.

Respectfully submitted,

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Philadelphia, Pa.,
Attorney for Petitioner.

September, 1958